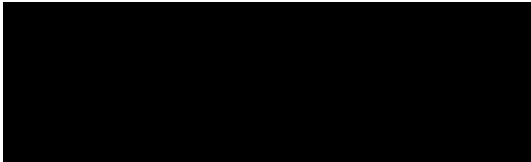


U.S. Department of Homeland Security

Citizenship and Immigration Services

B9

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



PUBLIC COPY

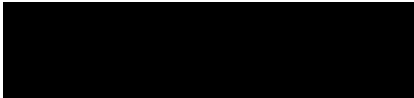
FILE:



Office: Vermont Service Center

Date:

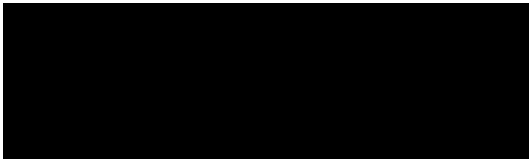
IN RE: Petitioner:
Beneficiary:



FEB 20 2004

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy M. Honey for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Peru who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that he is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel asserts that the petition should not be denied because the petitioner previously submitted evidence that establishes him as a battered spouse, and the petitioner also displays the required good moral character. Counsel submits additional evidence.

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner entered the United States without inspection in August 1994. The petitioner married his permanent resident spouse on July 24, 1996 at New York, New York. On April 10, 2002, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his permanent resident spouse during their marriage.

8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that he is a person of good moral character. Pursuant to 8 C.F.R. § 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or State in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing date of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

The director reviewed the evidence furnished by the petitioner and determined that the petitioner failed to submit evidence, as requested on July 7, 2003, to establish good moral character. He noted that although the petitioner was informed that the Service (now CIS) wanted additional information to clarify a statement he made about being arrested, the petitioner, in response, submitted documents already contained in the record, but not the information requested.

On appeal, the petitioner, in a sworn statement, indicates that in August 1996, his wife went to the precinct and filed a charge against him for "sexual abuse." The police came to his work where he was arrested. The following day, he went before the judge, and was subsequently "released on parole" and ordered to go to "a center of education for domestic abuse." The petitioner, however, did not further clarify what he means by "sexual abuse" or the nature or purpose of the classes at the "center of education."

The petitioner further claims in his sworn statement that his wife regretted pressing charges against him and she went to court to request that the charges be dropped; however, the judge told her that he still had to go a center of education. The petitioner states that he forgot to appear in court for his fourth appointment, and in March 1999, he was arrested for failure to appear. He again appeared before the judge, and the judge told him that he did not have a criminal record and closed his case.

The petitioner submits affidavits from four acquaintances attesting to his good moral character, and a Good Conduct Certificate indicating that a criminal history search of the records of the New York Police Department revealed the petitioner has no criminal record. He also submits a copy of the Unified Court System Criminal History Search Program. It is noted that the "search status" for this history search, however, is not reflected on the form. Nor does this form show that the clearance was obtained from the court that heard the petitioner's case. Furthermore, although the petitioner claimed that he was arrested for charges of "sexual abuse," and again for failure to appear in court in March 1999, the petitioner failed to submit the arrest reports for these two incidents. In addition, the applicant failed to submit the final disposition from the court where the charges for "sexual abuse" and failure to appear were heard.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has failed to overcome the findings of the director pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The

petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.